NP Red Rock, LLC d/b/a Red Rock Casino Resort & Spa *and* International Union of Operating Engineers Local 501, AFL–CIO. Case 28–CA–242302

August 23, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 29, 2019, and a first amended charge on June 6, 2019, by the International Union of Operating Engineers Local 501, AFL–CIO (the Union), the General Counsel issued a complaint on June 7, 2019. The complaint alleges that NP Red Rock, LLC d/b/a Red Rock Casino Resort & Spa (the Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to recognize and bargain with the Union and refusing to provide relevant and necessary information for the purpose of collective bargaining following the Union's certification in Case 28–RC–230613. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69 (d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On June 26, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Summary Judgment.[1] On June 28, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but asserts that it had no duty to bargain with the Union because the certification of representative is invalid. The Respondent alleges that, because the bargaining unit consists of guards, as defined by the Act, and the Union admits into membership employees other than guards, the Union is statutorily precluded from representing the unit.[2] In its response, the Respondent acknowledges that it had already raised this issue in the underlying representation case and reiterates the arguments previously made in the representation proceeding. It contends, however, that the alleged statutory preclusion of the Union constitutes a special circumstance requiring the Board to depart from its typical practice and consider arguments previously made in the representation case proceeding.

We reject the Respondent's argument that this case presents a special circumstance. All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. See, e.g., *NP Palace LLC d/b/a Palace Station Hotel & Casino*, 367 NLRB No. 129 (2019) (guard issue fully litigated and resolved in underlying representation proceeding). We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent admits, that about December 5, 2018, the Union requested in writing that the Respondent furnish it with the following information:

> (1) A list of current employees including their names, dates of hire, rates of pay[,] job classification[s], last known address, phone number, [and] date of completion of any probationary period [. . .].[3]

[1] The Union filed a Joinder in the General Counsel's motion.

[2] See Sec. 9(b)(3) of the Act ("[N]o labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.").

[3] The Union requested the information in a letter dated December 4, 2018, which is appended as Exhibit A to the Respondent's response to the Motion for Summary Judgment. That letter included the words "and Social Security number" at the end of the first numbered information request. Para. 5(f) of the complaint and the reference to that section contained in the Motion for Summary Judgment deleted the phrase "and Social Security number." The deletions in both documents were signified by brackets and an ellipsis. We construe the General Counsel's summary judgment motion to exclude the Social Security numbers of unit employees. Moreover, even if the General Counsel's motion were interpreted to seek such data, the Board has held that Social Security numbers are not presumptively relevant and that the requesting union must demonstrate their relevance. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam). There has been no effort to demonstrate relevance here.

(2) A copy of all current company personnel policies, practices or procedures.

(3) A statement and description of all company personnel policies, practices or procedures other than those mentioned in [n]umber 2 above.

(4) A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care, or any other plans which relate to the employees.

(5) Copies of all current job descriptions.

(6) Copies of any company wage or salary plans.

(7) Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline.

(8) A statement and description of all wage and salary plans which are not provided under number 6 above.

It is well established that the foregoing types of information concerning the terms and conditions of employment of unit employees are presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g. *Metro Health Foundation, Inc*., 338 NLRB 802, 803 (2003). Moreover, the Respondent has not asserted any basis for rebutting the presumption. See, e.g., *NP Sunset LLC*, *d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 1–2 (2019)*; CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 F.Appx. 10 (D.C. Cir. 2017) (per curiam); *Metro Health Foundation*, supra.[4]

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Las Vegas, Nevada (the Respondent's facility) and has been engaged in operating a hotel and casino.

In conducting its operations during the 12-month period ending on June 6, 2019, the Respondent derived gross revenues in excess of $500,000. In conducting its operations during the above period, the Respondent purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Nevada.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following a representation election held on November 29, 2018, the Union was certified on December 11, 2018,[5] as the exclusive collective-bargaining representative of the employees in the following unit:

> All full-time and regular part-time slot technicians and utility technicians employed by [Respondent] at its facility in Las Vegas, Nevada; excluding all other employees, office and clerical employees, guards, and supervisors as defined by the National Labor Relations Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

Since about December 5, 2018, the Union requested that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about December 10, 2018, the Respondent has failed and refused to recognize and bargain with the Union.

Since about December 5, 2018, the Union requested in writing that the Respondent furnish the Union with the information set forth above that is necessary for, and relevant to, the Union's performance of its duties as the

[4] With respect to "company wage or salary plans," we note that, in its response, the Respondent refers to this information as confidential but provides no explanation or argument in support. It is well settled that the mere assertion of confidentiality does not, by itself, raise a material issue of fact warranting consideration. E.g., *Mission Foods*, 345 NLRB 788, 792 (2005) (summary judgment granted where "[r]espondent . . . only asserted a blanket claim of confidentiality, and [did] not establish[] why particular information would trigger specific confidentiality concerns"); see also *Bud Antle, Inc*., 359 NLRB 1257, 1265 (2013) (claim of confidentiality rejected when no evidence offered in support), reaffirmed and incorporated by reference 361 NLRB 873 (2014). Further, with respect to the Union's request in item 7 for copies of witness statements in disciplinary matters, the Respondent does not contend there is a confidentiality interest weighing against disclosure of any specific statements or, indeed, raise any particularized defense (other than the general possibility of union threats, bullying, or harassment), or argue that the applicable standard should be changed. See *NP Sunset LLC*, 367 NLRB No. 62, slip op. at 2 fn. 5; see also *Piedmont Gardens*, 362 NLRB 1135 (2015) (overruling *Anheuser-Busch, Inc.*, 237 NLRB 982 (1978) (holding that witness statements must be furnished on request unless employer establishes legitimate and substantial confidentiality interest that outweighs the union's need for the statements)), affd. on other grounds 858 F.3d 612 (D.C. Cir. 2017)). We apply *Piedmont Gardens* here as extant precedent absent any request to reconsider it.

[5] On February 22, 2019, by unpublished Order, the Board denied the Respondent's request for review of the Regional Director's Decision and Direction of Election and Certification of Representative.

exclusive collective-bargaining representative of the unit. Since about December 10, 2018, the Respondent has failed and refused to furnish the Union with the requested information.

We find that these failures and refusals constitute an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 10, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit and to furnish the Union with requested information regarding the terms and conditions of employment of unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information it requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).[6]

ORDER

The National Labor Relations Board orders that the Respondent, NP Red Rock, LLC d/b/a Red Rock Casino Resort & Spa, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers Local 501, AFL–CIO as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time slot technicians and utility technicians employed by [the Respondent] at its facility in Las Vegas, Nevada; excluding all other employees, office and clerical employees, guards, and supervisors as defined by the National Labor Relations Act.

(b) Furnish the Union in a timely manner the information requested by the Union on December 5, 2018.

(c) Within 14 days after service by the Region, post at its facility in Glendora, California, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former

[6] The Union requests that the Board grant certain extraordinary remedies, including, among others, requiring the Respondent to provide the Union with signed copies of the Board's notice and a photograph of the posted notice, paid time for the employees to read and review the Board's order and remedy, the reading of the notice by the Employer's representative of the Employer so that the Union's representative can record it, and a mail notice. We deny the Union's request, as we find that the Board's traditional remedies are sufficient to effectuate the policies of the Act.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees employed by the Respondent at any time since December 10, 2018.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 23, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Union of Operating Engineers Local 501, AFL–CIO as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time slot technicians and utility technicians employed by us at our facility in Las Vegas, Nevada; excluding all other employees, office and clerical employees, guards, and supervisors as defined by the National Labor Relations Act.

WE WILL furnish the Union in a timely manner the information requested by the Union on December 5, 2018.

NP RED ROCK, LLC D/B/A RED ROCK CASINO RESORT & SPA

The Board's decision can be found at www.nlrb.gov/case/28-CA-242302 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.